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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC-JSC

This document relates to:

ALL ACTIONS

**PLAINTIFFS' OPPOSITION TO
DEFENDANT FACEBOOK, INC.'S
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE A RESPONSE TO JOINT
DISCOVERY LETTER BRIEF
REGARDING TAR**

Judge: Hon. Vince Chhabria and
Hon. Jacqueline Scott Corley
Courtroom: 4, 17th Floor

1 Pursuant to Local Civil Rule 7-11, Plaintiffs make the following four points in opposition
2 to Defendant Facebook, Inc.'s Administrative Motion for Leave to File a Response to Joint
3 Discovery Letter Brief Regarding TAR ("Administrative Motion"), Dkt. No. 704.

4 *First*, there is no reason to change the dispute-resolution process that the Court already
5 established. The Court ordered the parties to submit either a TAR stipulation, or a joint letter on
6 TAR, on July 2. (Dkt. No. 693.) The parties submitted a joint letter on July 2. Plaintiffs'
7 attachments to the July 2 joint letter exceeded the prescribed 21 pages only because Plaintiffs
8 included a proposed TAR protocol. If the Court would like that TAR protocol removed from the
9 attachments to the joint letter and refiled instead as a proposed order, Plaintiffs will do so. The
10 important point, in any event, is that the Court already established a briefing process for TAR and
11 the parties complied with it in every way that matters. Facebook now wants this process to be
12 altered. In a case already replete with delays and disputes, however, no further complications are
13 warranted.

14 *Second*, Facebook insists further briefing is necessary because it was surprised by
15 Plaintiffs' acceptance of the need for TAR. But the clear presupposition of the Court's order was
16 that TAR would be used; otherwise, no stipulation or letter would be necessary in the first place.
17 Plaintiffs were simply adhering to that presupposition. And Facebook already knew that Plaintiffs
18 had accepted the need for TAR. It is false to say otherwise. After preliminary discussions with
19 Judge Andler and Mr. Garrie in April, Plaintiffs agreed that using TAR made sense. Plaintiffs'
20 agreement was then communicated to Facebook. Indeed, as requested by the mediators, Plaintiffs
21 provided Facebook with a draft TAR protocol on May 21 and the parties continued to discuss
22 until Facebook abruptly changed course and abandoned TAR. That was surprising. Plaintiffs'
23 support for TAR, discussed at length by the parties through multiple mediation sessions, is not.

24 *Third*, Facebook asserts that Plaintiffs did not agree to blindly accept a mediator's
25 proposal until after they learned that Facebook had reversed course and rejected TAR. It is not
26 made clear why this fact, even if true, makes further briefing necessary. Regardless, Facebook's
27 assertion is untrue. Plaintiffs agreed to accept whatever TAR protocol the Discovery Mediator
28

proposed on June 23 but did not learn until June 28 that Facebook had reversed course and rejected TAR. It is possible that Facebook did not know that Plaintiffs had agreed to accept a mediator's proposal on June 23. (As is common with mediator's proposals, the discovery mediators here may have chosen not to inform Facebook of Plaintiffs' commitment since Facebook rejected the mediator proposal.) But Facebook would have learned this fact had it responded to Plaintiffs' request to meet and confer before it filed its Administrative Motion.¹

Fourth, further briefing is unnecessary because the parties have already said that they support the appointment of a special master under Rule 53. The TAR issue can and should be the first issue decided by the Special Master. This should not be a difficult task, since Mr. Garrie has discussed this matter with the parties for months, and already suggested that he would recommend a TAR protocol based on the parties' positions in the TAR discussions.

The Court should deny Facebook's Administrative Motion. If it grants it, Plaintiffs request permission to respond to its proposed letter brief.

Dated: July 19, 2021

Respectfully submitted,

KELLER ROHRBACK L.L.P.

BLEICHMAR FONTI & AULD LLP

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By: /s/ Lesley E. Weaver
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¹ Plaintiffs give their permission for the Court to confer with Judge Andler and Mr. Garrie, and encourage Facebook to do the same, particularly now that Facebook has put the sequence of events at issue.

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Plaintiffs' Co-Lead Counsel

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Derek W. Loeser, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of July, 2021, at Seattle, Washington.

/s/ Derek W. Loeser

Derek W. Loeser

CERTIFICATE OF SERVICE

I, Sarah Skaggs, hereby certify that on July 19, 2021, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

In addition, the following were served via email:

Anjeza Hassan
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/s/ Sarah Skaggs
Sarah Skaggs